

Virginia Regulatory Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5-20-204
Secondary Action(s):	Article 4 of 9 VAC 5 Chapter 40 (9 VAC 5-40-240 et seq.)
Action Title:	Northern Virginia Ozone Nonattainment Area Reclassification
Date:	January 31, 2003

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 2.2-4100 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 2.2-4006 A through 4 at the final stage. Note that agency actions exempt pursuant to § 2.2-4006 A 1 through 4 of the APA do not require filing with the Registrar at the proposed stage.

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

The applicability threshold for a major source varies depending on the area's nonattainment classification. For serious nonattainment areas, the major source threshold is 50 tons per year, and for severe nonattainment areas, the major source threshold is 25 tons per year. The metropolitan Washington, DC ozone nonattainment area, which had originally been classified as serious, was recently reclassified as severe. This action mandates the reduction of the major source threshold from 50 tons per year to 25.

The first regulatory requirement is to change the area's classification in the state regulations from serious to severe. Due to the structure of the nonattainment new source review regulations, changing the classification will automatically lower the major stationary source threshold for VOCs and NO_x from 50 tons per year to 25. The second requirement is to change the major stationary source threshold in the RACT regulations

from 50 tons per year to 25. This has already been accomplished for the VOC portion of the regulations, so the remaining task is to make the change for NO_x.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On February 28, 2003, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Nonattainment Areas (9 VAC 5 Chapter 20, 9 VAC 5-20-204). The regulation amendments are to be effective on May 1, 2003.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the Board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

On January 24, 2003 (68 FR 3410), the U.S. Environmental Protection Agency (EPA) reclassified ("bumped up") the metropolitan Washington, DC ozone nonattainment area, which includes portions of northern Virginia, from serious to severe. This action becomes effective on March 25, 2003. The bump-up necessitates changes to Virginia's State

Implementation Plan (SIP) to implement certain additional requirements applicable to severe areas beyond those which were applicable to areas classified as serious.

Family Impact Statement

Please provide an analysis of the impact of the regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

TEMPLATES\EXEMPT\TH09
REG\DEV\D0308TH